

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 21-cr-20013

Hon. Matthew F. Leitman

v.

MONTINEZ SMITH,

Defendant.

**ORDER CONSTRUING “REQUEST FOR DOWNWARD DEPARTURE”
(ECF No. 55) AS MOTION FOR COMPASSIONATE RELEASE AND
DENYING MOTION WITHOUT PREJUDICE**

On December 6, 2022, Defendant Montinez Smith filed a “Request for Downward Departure.” (*See* Req., ECF No. 55.) The Court has reviewed the request and has determined that it is in the nature of a motion for compassionate release under 18 U.S.C. § 3582(c). Section 3582(c) requires incarcerated litigants to either (1) “fully exhaust [] all administrative rights;” or (2) submit a request for early release to the warden of their facility and wait 30 days before they may file a motion for compassionate release. 18 U.S.C. § 3582(c)(1)(A). This exhaustion requirement is mandatory, and a defendant’s failure to satisfy either of these prerequisites requires the Court to dismiss his motion for compassionate release without prejudice. *United States v. Alam*, 960 F.3d 831, 836 (6th Cir. 2020).

There is no indication in this record that Smith has either exhausted his administrative remedies or submitted a request for early release to the warden of his facility. Accordingly, Smith's Request for a Downward Departure (ECF No. 55) is **DENIED WITHOUT PREJUDICE.**

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: March 21, 2023

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on March 21, 2023, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
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